

Senate Bill No. 1146

Passed the Senate August 26, 2010

Secretary of the Senate

Passed the Assembly August 25, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 22165 and 22166 of, and to add and repeal Article 3.5 (commencing with Section 22348) of Chapter 2 of Division 9 of, the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, Florez. Finance lenders.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations and makes a willful violation of its provisions a crime. Existing law regulates the charges a licensee may impose or receive on loans it makes and authorizes a licensee to contract for and receive specified alternative charges and administrative and delinquency fees.

This bill, until January 1, 2015, would establish the Pilot Program for Affordable Credit-Building Opportunities for the purpose of increasing the availability of credit-building opportunities to underbanked individuals seeking low-dollar-value loans. The bill would require licensees to file an application with, and pay a fee to, the commissioner to participate in the program. The bill would authorize a licensee approved by the commissioner to participate in the program to impose specified alternative interest rates and charges, including an administrative fee and delinquency fees, on loans of at least \$250 and less than \$2,500, subject to certain requirements.

This bill would also authorize licensees in the program to use the services of finders, defined as entities who, at the finder's physical location for business, bring licensees and prospective borrowers together for the purpose of negotiating loan contracts at the finder's location, subject to a written agreement meeting specified requirements. The bill would establish the services a finder is authorized and required to perform, and would require a finder to comply with the laws applicable to the licensee relative to information security. The bill would require a licensee to notify the commissioner within 15 days of entering into a contract with a finder, would require a licensee to pay an annual finder registration fee to the commissioner, and would require a licensee

to submit an annual report to the commissioner on the licensee's relationship and business arrangements with a finder, as specified. The bill would authorize the commissioner to examine the operations of a licensee and a finder to ensure that the activities of the licensee and the finder are in compliance with these provisions. The bill would make a licensee that uses a finder responsible for a violation of these provisions by a finder or a finder's employee, and would authorize the commissioner to impose administrative penalties against a finder for a violation of these provisions. The bill would authorize the commissioner, upon a violation of these provisions, to disqualify a finder from performing services, bar a finder from performing services at one or more specific locations of the finder, terminate a written agreement between a licensee and a finder, and, under specified circumstances, prohibit the use of the finder by all licensees.

This bill would require the commissioner to examine the performance of each licensee in the program at least once every 24 months, and would require the costs of examination to be paid by the licensee to the commissioner, as specified. The bill would also require the commissioner to conduct a random sample survey of borrowers under the program. The bill would require the commissioner to report to specified legislative committees, by January 1, 2014, summarizing utilization of the Pilot Program for Affordable Credit-Building Opportunities, as specified.

Existing law prohibits a licensed finance lender or broker from using advertising copy after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. Existing law authorizes the commissioner to require a licensee to maintain a file of all advertising copy for a period of 90 days from the date of its use.

This bill would authorize the commissioner to direct any licensee to submit advertising copy for review by the commissioner prior to its use. The bill would authorize the commissioner to require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 22165 of the Financial Code is amended to read:

22165. No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.

SEC. 2. Section 22166 of the Financial Code is amended to read:

22166. The commissioner may require licensees to maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

SEC. 3. Article 3.5 (commencing with Section 22348) is added to Chapter 2 of Division 9 of the Financial Code, to read:

Article 3.5. Pilot Program for Affordable Credit-Building Opportunities

22348. (a) The Pilot Program for Affordable Credit-Building Opportunities is hereby established and is intended to increase the availability of affordable credit-building opportunities to underbanked individuals seeking low-dollar-value loans and to help those individuals move into the financial mainstream.

(b) All references in this article to the program shall mean and refer to the Pilot Program for Affordable Credit-Building Opportunities.

22349. Any licensee wishing to participate in the program, who is in good standing with the commissioner and has no outstanding enforcement actions or deficiencies at the time of its application, shall file an application with the commissioner, in a manner prescribed by the commissioner, and shall pay a fee to the

commissioner, in an amount calculated by the commissioner to cover its costs to administer this article.

22349.1. The commissioner shall not approve any licensee to participate in the program, unless that licensee has been accepted as a data furnisher by at least one of the national credit reporting agencies for the purpose of reporting borrower payment performance.

22349.2. Every licensee approved by the commissioner to participate in the program shall file with the commissioner on or before the 15th day of March an annual report consistent with Section 22159, separate from any other annual report the licensee may be required to file.

22350. Nothing in this article shall exempt any licensee from any of the provisions of this division or Section 1632 of the Civil Code.

22351. No licensee may offer or make a loan, nor impose any charges or fees pursuant to Section 22352, nor use a finder pursuant to Section 22353, without prior approval from the commissioner to participate in the program.

22352. (a) Any loan made pursuant to this section shall comply with the following requirements:

(1) The loan shall be unsecured.

(2) Interest on the loan accrues on a simple-interest basis, through the application of a daily periodic rate to the actual unpaid principal balance each day.

(3) The licensee discloses the following to the consumer in writing at the time of application:

(A) The annual percentage rate, the periodic payment amount, and the total finance charge, calculated as required by Federal Reserve Board Regulation Z, as to a loan of an amount and term substantially similar to the loan applied for by the consumer.

(B) That the consumer shall have the right to rescind the loan by notifying the licensee of the consumer's intent to rescind the loan and returning the principal advanced by the end of the business day following the date of the consummation of the loan.

(4) The loan has a minimum principal amount upon origination of two hundred fifty dollars (\$250) and a term of not less than the following:

(A) Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).

(B) One hundred twenty days for loans whose principal balance upon origination is at least five hundred dollars (\$500), but is less than one thousand five hundred dollars (\$1,500).

(C) One hundred eighty days for loans whose principal balance upon origination is at least one thousand five hundred dollars (\$1,500).

(5) The licensee complies with the requirements of any applicable state or federal law.

(b) As an alternative to the charges authorized by Section 22303 or 22304, a licensee approved by the commissioner to participate in the program may contract for and receive charges for a loan made pursuant to this section at a rate not exceeding the sum of the following:

(1) Two and one-half percent per month on that part of the unpaid principal balance of the loan up to and including, but not in excess of, one thousand dollars (\$1,000).

(2) Two and one-sixth percent per month on that portion of the unpaid principal balance of the loan in excess of one thousand dollars (\$1,000).

(c) Notwithstanding subdivision (b), a licensee approved by the commissioner to participate in the program shall reduce the rate on each subsequent loan to the same borrower by a minimum of one-twelfth of 1 percent per month, if all of the following conditions are met:

(1) The subsequent loan is originated no more than 180 days after the prior loan is fully repaid.

(2) The borrower was never more than 15 days delinquent on the prior loan.

(3) The prior loan was outstanding for at least one-half of its original term prior to its repayment.

(d) As to any loan made under this section, a licensee approved by the commissioner to participate in the program may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, in an amount not in excess of either 5 percent of the principal amount, exclusive of the administrative fee, or sixty-five dollars (\$65), whichever is less. A licensee shall not charge the same borrower more than one origination fee in any six-month period. An administrative fee shall not be contracted for or received in connection with the refinancing of a loan unless at least one year has elapsed since the

receipt of a previous administrative fee paid by the borrower. Only one administrative fee shall be contracted for or received until the loan has been repaid in full. Section 22305 shall not apply to any loan made under this section.

(e) Notwithstanding subdivision (a) of Section 22320.5, a licensee approved by the commissioner to participate in the program may contract for and receive a delinquency fee that is one of the following amounts:

(1) For a period in default of not less than seven days, an amount not in excess of twelve dollars (\$12).

(2) For a period in default of not less than 14 days, an amount not in excess of eighteen dollars (\$18).

(f) If a licensee opts to impose a delinquency fee, it shall use the delinquency fee schedule described in subdivision (e), subject to all of the following:

(1) No more than one delinquency fee may be imposed per delinquent payment.

(2) No more than two delinquency fees may be imposed during any period of 30 consecutive days.

(3) No delinquency fee may be imposed on a borrower who is 180 days or more past due if that fee would result in the sum of the borrower's remaining unpaid principal balance, accrued interest, and delinquency fees exceeding 180 percent of the original principal amount of the borrower's loan.

(4) The licensee or any of its wholly owned subsidiaries shall attempt to collect a delinquent payment for a period of at least 30 days following the start of the delinquency before selling or assigning that unpaid debt to an independent party for collection.

(g) The following shall apply to a loan made by a licensee pursuant to this section:

(1) Prior to disbursement of loan proceeds, the licensee shall either (A) offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the commissioner for use in complying with this section; or (B) invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the commissioner for use in complying with this section. The borrower shall not be required to participate in either of these education programs or seminars.

(2) The licensee shall report each borrower's payment performance to at least one of the national credit reporting agencies in the United States.

(3) (A) The licensee shall underwrite each loan to determine a borrower's ability and willingness to repay the loan pursuant to the loan terms, and shall not make a loan if it determines, through its underwriting, that the borrower's total monthly debt service payments, at the time of origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the licensee, exceed 50 percent of the borrower's gross monthly income.

(B) (i) The licensee shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self reported by the borrower but not available through independent verification. The licensee shall verify that information using a credit report from at least one of the three major credit bureaus or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

(ii) Notwithstanding the verification requirement in subparagraph (A), the licensee shall request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions in the calculation of the borrower's outstanding debt obligations.

(iii) The licensee shall not be required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.

(C) The licensee shall also verify the borrower's income that the licensee relies on to determine the borrower's debt-to-income ratio using information from either of the following:

(i) Electronic means or services that provide reliable evidence of the borrower's actual income.

(ii) Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(h) (1) Notwithstanding Sections 22311 to 22315, inclusive, no person, in connection with, or incidental to, the making of any loan made pursuant to this article, may offer, sell, or require the borrower to contract for "credit insurance" as defined in paragraph

(1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(2) Notwithstanding Sections 22311 to 22315, inclusive, no licensee, finder, or any other person that participates in the origination of a loan under this article shall refer a borrower to any other person for the purchase of “credit insurance” as defined in paragraph (1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(i) (1) No licensee shall require, as a condition of providing the loan, that the borrower waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the commissioner or any court or other public entity, or that the borrower agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any such waiver by a borrower must be knowing, voluntary, and in writing, and expressly not made a condition of doing business with the licensee. Any such waiver that is required as a condition of doing business with the licensee shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not made a condition of the contract with the borrower.

(2) No licensee shall refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person’s right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(3) This subdivision shall not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute, after a claim or dispute has arisen. Nothing in this subdivision shall affect the enforceability or validity of any other provision of the contract.

(j) This section shall not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251. For purposes of this subdivision, “bona fide principal amount” shall be determined in accordance with Section 22251.

22353. (a) A licensee who is approved by the commissioner to participate in the program may use the services of one or more finders as provided in this article.

(b) For purposes of this article, a “finder” means an entity that, at the finder’s physical location for business, brings a licensee and a prospective borrower together for the purpose of negotiating a loan contract.

22354. (a) A finder may perform one or more of the following services for a licensee at the finder’s physical location for business:

(1) Distributing, circulating, using, or publishing preprinted brochures, flyers, factsheets, or other written materials relating to loans that the licensee may make or negotiate and that have been reviewed and approved in writing by the licensee prior to their being distributed, circulated, or published.

(2) Providing written factual information about loan terms, conditions, or qualification requirements to a prospective borrower that has been either prepared by the licensee or reviewed and approved in writing by the licensee. A finder may discuss that information with a prospective borrower in general terms, but may not provide counseling or advice to a prospective borrower.

(3) Notifying a prospective borrower of the information needed in order to complete a loan application without providing counseling or advice to a prospective borrower.

(4) Entering information provided by the prospective borrower on a preprinted or electronic application form or onto a preformatted computer database without providing counseling or advice to a prospective borrower.

(5) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the licensee.

(6) Contacting the licensee to determine the status of a loan application.

(7) Communicating a response that is returned by the licensee’s automated underwriting system to a borrower or a prospective borrower.

(8) Obtaining a borrower's signature on documents prepared by the licensee and delivering final copies of the documents to the borrower.

(b) A finder shall not engage in any of the following activities:

(1) Providing counseling or advice to a borrower or prospective borrower.

(2) Providing loan-related marketing material that has not previously been approved by the licensee to a borrower or a prospective borrower.

(3) Interpreting or explaining the relevance, significance, or effect of any of the marketing materials or loan documents the finder provides to a borrower or prospective borrower.

(c) Any person who performs one or more of the following activities is a broker within the meaning of Section 22004 rather than a finder within the meaning of this section:

(1) Negotiating the price, length, or any other loan term between a licensee and a prospective borrower.

(2) Advising either a prospective borrower or a licensee as to any loan term.

(3) Offering information pertaining to a single prospective borrower to more than one licensee, except that, if a licensee has declined to offer a loan to a prospective borrower and has so notified that prospective borrower in writing, the person may then offer information pertaining to a single prospective borrower to another licensee with which it has a finder's agreement.

(4) Personally contacting or providing services to a borrower or prospective borrower at any place other than the finder's physical location for business.

(d) A finder shall comply with all laws applicable to the licensee that impose requirements upon the licensee for safeguards for information security.

22355. (a) At the time the finder receives or processes an application for a pilot program loan, the finder shall provide the following statement to the applicant, on behalf of the licensee, in no smaller than 10-point type, and shall ask the applicant to acknowledge receipt of the statement in writing:

“Your loan application has been referred to us by [Name of Finder]. We may pay a fee to [Name of Finder] for the successful referral of your loan application. IF YOU ARE APPROVED FOR

THE LOAN, [NAME OF LICENSEE] WILL BECOME YOUR LENDER, AND YOU WILL BE BUILDING A RELATIONSHIP WITH [NAME OF LICENSEE]. If you wish to report a complaint about [Name of Finder] or [Name of Licensee] regarding this loan transaction, you may contact the California Department of Corporations at 1-866-ASK-CORP (1-866-275-2677), or file your complaint online at www.corp.ca.gov.”

(b) If the loan is consummated, the licensee shall mail or give to the borrower a copy of the disclosure notice within two weeks of the date of the loan consummation.

22356. (a) A finder may be compensated by the licensee pursuant to the written agreement between the licensee and the finder, as described in Section 22357.

(b) The compensation of a finder by a licensee shall be subject to all of the following requirements:

(1) No fee shall be paid to a finder in connection with a loan application until and unless that loan is consummated.

(2) No fee shall be paid to a finder based upon the principal amount of the loan.

(3) No fee paid to a finder shall exceed the following amounts:

(A) Forty-five dollars (\$45) per loan for the first 40 loans originated each month at the finder’s location.

(B) Forty dollars (\$40) per loan for any subsequent loans originated during that month at the finder’s location.

(4) The finder’s location for services under this article and other information required by Section 22357 has been reported to the commissioner and the finder has not been barred from providing services at that location by the commissioner.

(c) No licensee shall, directly or indirectly, pass on to a borrower any fee, or any portion of any fee, that the licensee pays to a finder in connection with that borrower’s loan or loan application.

22357. A licensee that utilizes the service of a finder shall do all of the following:

(a) Notify the commissioner within 15 days of entering into a contract with a finder, on a form acceptable to the commissioner, regarding all of the following:

(1) The name and business address of the finder and all locations at which the finder will perform services under this article.

(2) The name and contact information for an employee of the finder who is knowledgeable about, and has the authority to execute, the contract governing the business relationship between the finder and the licensee.

(3) The name and contract information for one or more employees of the finder who is or are responsible for the activities of the finder at each of its locations.

(4) A list of the activities the finder shall perform on behalf of the licensee.

(5) Any other information requested by the commissioner.

(b) Pay an annual finder registration fee to the commissioner in an amount to be established by the commissioner by regulation for each finder utilized by the licensee.

(c) Submit an annual report to the commissioner including any information pertaining to each finder and the licensee's relationship and business arrangements with each finder as the commissioner may by regulation require.

22358. All arrangements between a licensee and a finder shall be set forth in a written agreement between the parties. The agreement shall contain a provision establishing that the finder agrees to comply with all regulations that are established by the commissioner pursuant to this article regarding the activities of finders and that the commissioner shall have access to all of the finder's books and records that pertain to the finder's operations under the agreement with the licensee.

22359. (a) The commissioner may examine the operations of each licensee and each finder to ensure that the activities of the licensee and the finder are in compliance with this article. The costs of the commissioner's examination of each finder shall be attributed to the commissioner's examination of the licensee. Any violation of this article by a finder or a finder's employee shall be attributed to the finance lender with whom it has entered into an agreement for purposes of determining the licensee's compliance with this division.

(b) Upon a determination that a finder has acted in violation of this article, or any implementing regulation, the commissioner shall have the authority to disqualify a finder from performing services under this article, bar a finder from performing services at one or more specific locations of that finder, terminate a written agreement between a finder and a licensee, and, if the

commissioner deems that action in the public interest, prohibit the use of that finder by all licensees accepted to participate in the pilot program.

(c) In addition to any other penalty allowed by law, the commissioner may impose an administrative penalty up to two thousand five hundred dollars (\$2,500) for violations committed by a finder.

22360. Notwithstanding any other provision of law, the commissioner shall examine each licensee that is accepted into the program at least once every 24 months. The cost of each examination of a licensee shall be paid to the commissioner by the licensee examined, and the commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

22361. (a) On or before January 1, 2014, the commissioner shall submit a report to the Senate Committee on Banking, Finance and Insurance, the Assembly Committee on Banking and Finance, and the Senate and Assembly Committees on Judiciary, in compliance with Section 9795 of the Government Code, summarizing utilization of the Pilot Program for Affordable Credit-Building Opportunities and including recommendations regarding whether the program should be continued after January 1, 2015.

(b) The information disclosed to the commissioner for the commissioner's use in preparing the report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(c) If there is more than one licensee approved to participate in the program under this article, the report required pursuant to subdivision (a) shall state information in aggregate so as not to identify data by specific licensee.

(d) The report required pursuant to this section shall include, but not be limited to, the following:

(1) The number of finance lender licensees who applied to participate in the program.

(2) The number of finance lender licensees accepted to participate in the program.

(3) The number of program loan applications received by lenders participating in the program, the number of loans made pursuant to the program, the total amount loaned, and the distribution of interest rates and principal amounts upon origination among those loans.

(4) The number of borrowers who obtained more than one program loan.

(5) Of the number of borrowers who obtained more than one program loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(6) The income distribution of borrowers, including the number of borrowers who obtained at least one program loan and who resided in a low-to-moderate-income census tract at the time of their loan application.

(7) The number of borrowers who obtained loans for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the loan was obtained:

(A) Medical.

(B) Other emergency.

(C) Vehicle repair.

(D) Vehicle purchase.

(E) To pay bills.

(F) To consolidate debt.

(G) To build or repair credit history.

(H) To finance a purchase of goods or services other than a vehicle.

(I) Other.

(8) The number of borrowers who have a bank account, the number of borrowers who have a bank account and use check-cashing services, and the number of borrowers who do not have a bank account.

(9) The number and type of finders used by all licensees, the amount of finder's fees paid by the type of finder, and the relative performance of loans consummated by finders compared to the performance of loans consummated without a finder.

(10) The number and percentage of borrowers who obtained one or more program loans on which late fees were assessed, the total amount of late fees assessed, and the average late fee assessed by dollar amount and as a percentage of the principal amount loaned.

(11) The quality of underwriting and performance of loans under this article consistent with the reporting standards applicable to other loans and financial products, including, but not limited to, credit cards and deferred deposit transactions.

(12) The number of times the commissioner found that a finder or licensee had violated this article.

(13) The number of times that the commissioner disqualified a finder from performing services, barred a finder from performing services at one or more specific locations of the finder, terminated a written agreement between a finder and a licensee, or imposed an administrative penalty.

(14) Recommendations for improving the program.

(15) Recommendations regarding whether the program should be continued after January 1, 2015.

(e) The commissioner shall conduct a random sample survey of borrowers who have participated in the program to obtain information regarding the borrowers' experience and licensees' compliance with this article. The results of this survey shall be included in the report required by this section.

22362. This article shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 4. Notwithstanding the repeal of the Pilot Program for Affordable Credit-Building Opportunities under this act, a loan agreement entered into pursuant to the pilot program shall continue to govern the rights, remedies, and obligations of the lender and borrower under that agreement.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor